

REMARKS

Claims 20-36 are pending and stand rejected. Independent claims 20, 31 and 32 are herewith amended, no dependent claims are amended, no claims are canceled, and no new claims are added. Thus, claims 20-36 are pending continued examination on the merits.

Applicants respectfully request withdrawal of the finality of the instant Office Action.

Applicants respectfully solicit entry and favorable consideration of the amendments and remarks presented herewith.

The instant Amendment after Final is tendered in an effort to place the application in condition for allowance without introducing new issues regarding consideration or additional searching by the Examiner. This Amendment was not earlier tendered because the posture of the application did not warrant such action.

Claim Rejections under 35 U.S.C. §102

Claims 20, 23-24, 26-36 are rejected as allegedly anticipated by the ‘470 patent to Hartlaub (Hartlaub).

Applicants respectfully suggest that the amendments tendered herewith preclude a finding that Hartlaub anticipates the claimed. That is, Hartlaub fails to disclose a sensor adapted to sense a change in paraspinal muscle tone.” These elements are included in each independent claim 20, 31, and 32. Because Hartlaub fails to anticipate the independent claims it too fails to anticipate the rejected claims depending therefrom. As, of course, it is axiomatic that for this ground of rejection to successfully apply, then Hartlaub must disclose *each and every* claim limitation recited. For the foregoing reasons Applicants have overcome the rejection based solely upon Hartlaub and the rejection should be withdrawn.

Claim Rejections under 35 U.S.C. §103

Claims 20-21, 26, 31, 32, and 36 are rejected as allegedly unpatentable over the '428 patent to Obel et al. (Obel) in view of the Hartlaub.

Claims 20, 23-26, 31, 32, and 36 are rejected as allegedly unpatentable over the '377 patent to Sweeney et al. (Sweeney) in view of Hartlaub.

Claims 20, 23-24, 26-28, and 31-36 are rejected as allegedly unpatentable over the '577 published European patent application to Holmstrom et al. (Holmstrom) in view of Hartlaub.

Claim 22 is rejected as allegedly unpatentable over Hartlaub in view of the '718 patent to Krasner et al. (Krasner).

Since all three grounds of rejection are founded or based upon Hartlaub, Applicants respectfully assert that the rejections are flawed (i.e., they each fail to constitute a *prima facie* obviousness rejection).

Applicants assert that Hartlaub is completely devoid of any disclosure involving suggestion, teaching or disclosure tending to motivate one of skill in the art to combine the apparatus and methods of Hartlaub with any of Obel, Sweeney, Holmstrom, and/or Krasner.

The fact that none of the references recites paraspinal muscle tone in any respect appears to render the rejection ineffective. Applicants respectfully suggest that the claimed combination cannot be found in the relevant prior art and certainly not in the references applied hereinabove.

Conclusion

Applicants suggest that the claimed invention is sufficiently patentably distinct from the applied references and as such allowable over the art of record. Applicants respectfully request that the Examiner issue a Notice of Allowance so the claimed invention can pass to timely issuance as U.S. Letters Patent.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned attorney to attend to these matters.

Respectfully submitted,

Hill et al. by their attorney

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Date

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